

Sale of Organs From Living Donor for Transplant Motivation and Decision Making

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The discovery of techniques enabling organ transplants from both living donors and cadavers is one of the most significant medical advances of the second half of the twentieth century¹. It has also started vibrant discussions of novel medical ethics as well as religious issues. One of these is generated by the relative scarcity of available organs, together with the realization of many patients that for them organ transplant is the only remaining treatment. These inevitably drove patients and their families to search for creative ways to obtain a life saving organ. In our society, where every conceivable commodity is available provided the right price is being paid, it was only natural that a price will be offered for organs, which will balance the supply and the demand.

The proponents of legalizing a market for human organs address the self-explanatory horror of this concept by putting the import of saving life above all other considerations. Such an approach seems plausible in Jewish Law, where *pikuach nefesh* - the obligation of saving life, supersedes most objections and legal prohibitions.² This approach, however, needs careful investigation, since beside the life and health of the patient who is in a dire need of the organ, the life, dignity and health of the man who provide this organ should be considered as well.

"One³ is prohibited from **injuring⁴ oneself** as well as his fellow man. Not only a person who causes injury, but also one who beats up a non-guilty person of Israel, be it a minor or an adult, a man or a woman, in a quarrelsome way (or: in a debasing way⁵) transgresses a negative precept, as is written⁶ "and not exceed beat(ing) him,"⁷

¹ The first successful living donor transplant was performed between 23 year identical twins in 1954. Dr. Joseph E. Murray at Peter Bent Brigham Hospital in Boston, Mass., transplanted a healthy kidney from Ronald Herrick into his twin brother, Richard, who had chronic kidney failure . Richard Herrick went on to live an active, normal life, dying eight years later from causes unrelated to the transplant.

² "There is nothing that can stand before [the duty of] saving life, with the exception of idolatry, incest and bloodshed" Talmud Bavli Yoma 84,b

³ Maimonides, Laws Of Injury and Tort V,1

⁴ The term "injury" throughout this discussion applies to any physical trauma, including all sorts of surgery.

⁵ From a footnote in the Warsaw-Wilno common edition of Maimonides' Laws. Rabbi Moshe Feinstein, in *Igrot Moshe Yore-De'ah* Part III, 36, notes that both versions are correct and define the prohibition of causing an injury. It is not allowed to injure or even to beat a person either in a quarrelsome way or in order to debase him. This excludes injury (i.e. surgery) for medical (or even asthetical reasons - *Igrot Moshe Choshen Mishpat* Part III, 66).

⁶ Deut. XXV, 3

⁷ The full text (ibid. 1-3) goes: "If there is a controversy between men, and they come to judgment, that the judges may judge them; then they shall justify the righteous, and condemn the wicked. And it shall be, if the wicked man deserves to be beaten, that the judge shall cause him to lie down, and

if the *Torah* warned us against exceeding in the beating of a sinner, this prohibition extends a fortiori to beating an innocent person".

A person may not put his own life at risk as well⁸. The dilemma that arises when circumstances are such that the only way of saving another person's life is by risking your own, or by suffering an injury, is discussed in the Responsa literature, where a responsum⁹ by Rabbi David Ben Zimra¹⁰ is much quoted.

The question regards a person who was told by the local despot: "Let me cut off a limb of yours which will not kill you, or I shall execute your fellow Jew". Is that person obliged to agree to this atrocious deal? An anonymous source is cited as claiming that since the rescuer will not be killed, the obligation to save life supersedes the loss of limb suffered by him¹¹. Ben Zimra counters this argument¹² and concludes

to be beaten in his presence, by a certain number according to his fault. Forty stripes he may give him, **and not exceed**; lest, if he should exceed, and **beat him** above these with many stripes, then your brother should seem vile to you.

⁸ Maimonides Laws of Murder and Preserving Human Life XI, 4-5

⁹ *Shut Radvaz* vol. III, 627.

¹⁰ Born in Spain 1479 deceased in Zefat 1573. He was exiled from Spain 1492, and settled in Zefat. In 1513 he immigrated to Egypt where he served as a head of the Jewish community, a Rabbi, Chief of the Rabbinical Court, head of the local Yeshiva and was in charge of local charity. In 1553 he settled in Zefat again. Wrote more than 10,000 responsa as well as a commentary to Maimonides' Laws.

¹¹ The argument goes as follows: The laws of *Shabbat* may not be violated in order to rescue a limb, where there is no danger to life, but must be violated in order to save life. Hence, the obligation to save life that supersedes the laws of *Shabbat*, supersedes, a fortiori, the loss of a limb.

¹² The responsum contains a series of counter arguments some of which will be referred to later in our discussion. The lines printed in italics are comments attempting to illustrate the points made in the responsum and help understand its structure and reasoning.

- a. When the function of a limb, or even the limb itself, might be lost as a result of a disease or an accident, *Shabbat* laws may not be violated, because that danger is a given circumstance. But it does not imply that Jewish Law should ever require someone to actively sacrifice a limb even in order to save life.

*In Jewish Law when a certain dire circumstance exists, and in order to extricate himself, a person commits a crime, he is not considered to have been forced to take that action, and is fully accountable for the consequences (Maimonides Laws of The Foundations of The Torah V, 6). However, when one is put in a dire situation **in order** to force him to commit a crime, he is exonerated (ibid. V, 4). Similarly, a person may not violate the Laws of Shabbat in order to rescue a limb that is already in danger, but will not be held liable when he violates the Laws of Shabbat under threat of loosing a limb. Thus, he does not have to actively sacrifice a limb to save life.*

- b. *Even if the above is rejected - claiming that even though one is threatened that a limb of his will be cut off if he observes the Laws of Shabbat, he must observe these laws - it does not imply that one should agree to the cutting off of his limb in order to save life.*

The reason is that potentially any cut may cause uncontrollable blood loss and consequently death, a possibility that must be taken into account - being unlikely as it is. The Talmud (*Psachim* 25,b) prohibits one person from killing another in order to save his own life: "One came before *Raba* and said to him, 'The governor of my town has ordered me, "Go and kill so and so; if not, I will slay you"'. He answered him, 'Let him rather slay you than that you should commit murder; who knows that your blood is redder? Perhaps his blood is redder'." It could similarly be said to a person who nobly volunteers to have himself killed in order to save another: "Who knows that his blood is redder? Perhaps your blood is redder." Hence, one is prohibited from doing so. It follows,

according to Ben Zimra, that one does not have even to put his life at risk in order to rescue another. He saw a person who bled to death after his ear was scratched to let some blood out. The risk of bleeding to death is obviously much greater from cutting a limb than from scratching the ear, and this risk exempts one from volunteering to have his limb cut off, even to save another life.

- c. *Even if the above argument is rejected - claiming that the risk of death resulting from blood loss, in these circumstances, is negligible - the extent of one's obligation to observe the religious laws of Shabbat, is not the same as the personal obligation to save life..*

The a priori reasoning to obligate a person to sacrifice a limb in order to save life was a deduction from the assumption that one has to sacrifice a limb in order to observe the Laws of Shabbat. Even if that assumption will be deemed correct, the deduction is, however, wrong. The commitment to observe religious laws, including the Laws of Shabbat, is an infinite and absolute commitment derived from the relationship between the Creator and his chosen nation. The only reason a person does not have to sacrifice his life for the observation of most of these laws is that the law itself prohibits him from doing so. But sacrificing a limb for that observation might be required.

Saving life, however, is a relative obligation, taking into account the relative risks to the rescuer and to the rescued. Sacrificing one's life to save another has no point even in an a priori argument (see b above). Hence, no deduction can be made from the obligation to observe the Laws of Shabbat, to the obligation of saving life.

- d. *Even if the above argument is rejected - claiming that saving life should be considered not only a personal obligation but also a religious obligation to the Creator, just like observing the Laws of Shabbat - nevertheless, the conclusion that one must sacrifice a limb in order to save life could not be proven.*

The assumed obligation to sacrifice a limb in order to save another life was inferred from an assumed obligation in the Laws of Shabbat. However, the Talmud (*Sanhedrin* 54, a) rules that an offence established by inference [from minor to major] is not punishable. In order to be punishable the offence must be stated positively. Since cutting off a limb should be considered a most severe penalty, the obligation to sacrifice a limb to save life must be stated positively and not inferred from the Laws of Shabbat.

- e. *Even if we regard saving life and the sacrifice involved in it as a positive obligation rather than punishment, and hence not covered by the above mentioned rule - still, according to the accepted norm cutting off a limb should **legally** be considered as potentially fatal, even though the statistical **medical** risk is very small as pointed out in c above.*

The biblical punishment (Exodus XXI, 24-25) "Eye for eye, tooth for tooth...burning for burning, wound for wound, bruise for bruise" was interpreted (*Bava Kama* 84, a) as relating to pecuniary compensation rather than corporal punishment. The statement "eye for eye" is interpreted as meaning "no more than an eye for an eye," and not "life and eye for eye". If "eye for an eye" means corporal punishment, the defendant may lose his life as a result of taking his eye out, and he will end up paying with his life for an eye. The same should apply to the other punishments mentioned - burning, wound and a bruise. Namely, even these cannot mean corporal punishments because they risk the defendant's life.

Hence, the risk to life caused by any burning, wound or a bruise is legally considered to be real and significant, how much more so for cutting off a limb.

- f. Another proof that the danger of losing a limb is legally considered to be tantamount to risk to life itself, comes from the Laws of Shabbat. Some of the negative precepts in these laws are biblical and others are rabbinical. Only a real danger to life permits transgressing the biblical prohibitions. A danger of losing a limb, however, permits transgressing the rabbinical prohibitions (Rabbi Moshe Ben Nachman, *Torat Ha'adam* (Code of Man), Matter of Disease, Writings of Rabbi Moshe Ben Nachman, Mosad Harav Kook, 1964, Volume II p. 21).

On the face of it this argument is very strange, because it shows just the opposite - that a danger of losing a limb is not equivalent to a real danger to life. The obligation to

sacrifice a limb in order to observe the biblical Laws of Shabbat was the basis of the argument Ben Zimra Ben Zimra tried to oppose.

The explanation to this argument seems to be one that is based on an analysis developed by Rabbi Avraham Borenstein in his commentary on the Laws of Shabbat, "Eglei Tal" (Labor of Grinding 38, b, p. 91, a).

According to the rabbinical Laws of Shabbat, labors that should not be done by a Jew should also not be done by a non-Jew for a Jew, or obeying an order from a Jew. However, the Babylonian Talmud (Gittin 8, b) states that a non-Jew who is told to do so by a Jew can draw up a sale contract for land, which is bought from a non-Jew in the Land of Israel, even on the Shabbat. This exemption from the regular law is likened to another such an exemption. Usually the Laws of Shabbat might be violated only when there is a distinct danger to life. Still, when a person is sick to the extent that he must lie down in bed, a non-Jew may perform labors that are usually forbidden, in order to help alleviating his disease. These are unique exemptions. Usually a labor of a non-Jew on Shabbat is forbidden even when necessary to perform a biblical command like circumcision. An explanation is needed for these two exemptions.

The Jerusalem Talmud (Moed-Katan II, 4) explains the exemption of drawing up a contract discussed above, citing the story of Jericho that was conquered by Joshua on the Shabbat. The meaning of this citation is that since the actual conquest of the Land of Israel should proceed even on the Shabbat, even though the Laws of Shabbat are being violated, similarly the purchase of a house from a non-Jew, which is akin to conquering the land in a small way, may proceed even on the Shabbat, even though a rabbinical prohibition is being violated.

This explains the association between treating a sick person, and drawing up the contract on the Shabbat, made by the Babylonian Talmud. A disease which is life threatening should be treated on the Shabbat, even though Laws of Shabbat are being violated. A disease that is not life threatening should not be thus treated, but since it is akin to a life threatening disease in a small way, it might be treated even though a Rabbinical prohibition is being violated. This very deduction is the one that permits drawing up the contract. In both cases the nucleus (conquering the land, or saving life) is important enough to violate the Biblical Laws of Shabbat, hence the peripheral action (a purchase of land from a non-Jew, or treating a non-dangerous disease) is important enough to violate rabbinical prohibitions.

The Talmud (Eruvin 68, a) draws a distinction between a rabbinical prohibition that involves a manual act and one that involves no such act, such as a mere verbal instruction to a non-Jew. Rabbi Moshe Ben Nachman (ibid.) concludes that in order to treat a mere disease only a rabbinical prohibition that involves no manual act might be violated. However, when a danger of losing a limb exists, even a rabbinical prohibition that involves a manual act might be violated.

A danger of loss of a function of an organ, or the organ itself, according to the above reasoning is closer to the nucleus of a danger to life, than a mere disease. The reason seems to be that a loss of an organ is regarded as a partial death, since the body consists of organs and somatic death is the death of all the organs.

A similar argument could be found in the Talmud (Bava Kama 65, a). "If a man shall steal an ox, or a sheep, and kill it, or sell it; he shall restore five oxen for an ox, and four sheep for a sheep... If the theft be at all found in his hand alive, whether it be ox, or ass, or sheep; he shall restore double" (Exodus XXI, 37 - XXII, 3). The Talmud quotes Rab as saying: "The principal is reckoned as at the time of the theft, whereas double payment or four-fold and five-fold payments are reckoned on the basis of the value when the case was brought into Court." The Talmud questions that statement: "[If a thief misappropriated] a fat animal and caused it to become lean, he has to pay double payment or fourfold and five-fold payments according to the value at the time of theft. [Does this not contradict the ruling enunciated by Rab?]" The Talmud replies: There also [the thief has to pay thus] because we argue against him 'what is the difference whether you killed it altogether or only half-killed it' [The liability thus began at the time

that a person is not obliged to sacrifice a limb in order to save another life. However, one who chooses to practice pious conduct, above and beyond the requirement of the law, may act so nobly and will be blessed. Still, if there is a [significant medical]¹³ risk, one who will practice such a conduct is considered to be a foolish pietist.¹⁴ A person must primarily take into account, and avoid, even a probable risk to his own life, rather than a certain danger to another's.¹⁵

The above distinction between cases in which there exists no significant medical risks, and cases that it exists, is unclear. Ben Zimra argued¹⁶ that the danger of losing a limb is **legally** equivalent to the danger to life. True, he reached his final conclusion even if that argument was ignored, but he should have taken this consideration into account when reaching the final decision. It should follow that it is "foolish piety" to sacrifice a limb to save another life, no matter whether it involves a significant **medical** risk or not. Legally, risking one's life, and sacrificing one's limb should be the same.

In order to address this issue we shall make a distinction between two prohibitions against risking one's life. Murder is an absolute prohibition that also applies to committing suicide.¹⁷ Endangering life - whether one's own, or another's - when the actual risk is significant, may result in murder, and is therefore forbidden. There is no

when the thief caused the animal to become lean]. The notion that an irreversible bodily damage amounts to "half killing" should apply in the case of a loss of a human organ as well. Hence, since usually there are no irreversible damages resulting from a "normal" sickness, it is further removed from danger to life than a risk to irreversibly lose a function of a limb or the limb itself, the latter being "half death."

That is why rabbinical prohibitions that involve manual acts might be violated in order to save a limb from an irreversible damage, and not to treat a sick patient where there is no danger to his life.

Hence, Ben Zimra's argument seems to be that since a danger of losing a limb is legally tantamount to a danger to life in the framework of the Laws of Shabbat, the same consideration should apply the rule that one life may not be taken to save another - "Who knows that his blood is redder? Perhaps your blood is redder," to losing a limb. Thus, a limb should not be sacrificed to save another life.

- f. *Even if all these arguments are not accepted, and the a fortiori argument (see 12 above) holds in law as well as in logic, the following legal conclusion that one must sacrifice a limb in order to save another life is inherently wrong.*

It says (Proverbs III, 17): "Her (wisdom and Torah) ways are ways of pleasantness." Hence, the decisions of our Torah should be in accordance with good judgment and commonsense. It is inconceivable that a person should let his eye be put out, or his hand or leg be cut off in order that his fellow man would not be put to death.

¹³ See paragraph b in the above footnote that any cut to the body presents a risk of an uncontrollable blood loss and consequently death. Hence, the limitation set here that when there is a risk to life the pious conduct is considered wrong, must mean a significant medical risk.

¹⁴ Who along with a cunning rogue and others is considered to bring destruction upon the world (Sotah 20, a). An example of foolish pietist is given (ibid. 21, b) as a man that upon seeing a woman drowning in the river says: "It is improper for me to look upon her and rescue her." Denoting a behavior as foolish piety is declaring it highly improper, if not strictly forbidden.

¹⁵ See footnote 13 b above: "Who knows that his blood is redder? Perhaps your blood is redder."

¹⁶ See footnote 13 e and f above.

¹⁷ Maimonides, Laws of Murderer and Preserving Human Life II, 3: "'And surely your blood of your lives will I require' (Gen. IX, 5) applies to one who kills himself."

need for an explicit command against thus endangering life, because it follows from the basic prohibition against murder. As it is forbidden to murder in order to save life¹⁸ it follows that endangering one's life to save another's is not allowed.

But there is another command against risking life. The biblical command "Only take heed to thyself and keep thy soul [life] diligently"¹⁹ is interpreted²⁰ as directing the removal any hazards from one's property. There is a rabbinical command that extends the biblical one: "The²¹ sages prohibited many actions because they present a danger to one's life. Any person who transgresses these and says: `but I am risking my own life, and why should others to mind my actions?` Or: `I do not think these actions risk my life` will be punished by flagellation for disobedience²²."

The above quotation from Maimonides cites the transgressor's **motivation** to risking his life. That **motivation** must be germane to the transgression, otherwise why should these be cited?

It seems that the second command does not stem directly from the prohibition against murder, but has an additional message. One should "keep his soul diligently," as opposed to showing irreverence to life. It is not the very act that is forbidden, but the attitude of not "paying heed" to one's soul. Hence, the transgressor's defiance of his obligation to preserve his life, either because he wants to risk it, or because he does not regard that risk, is an integral component of his offence.

This second command applies to hazards and risks that do not lead directly to the loss of life. That command belongs to a set of three.²³ The verse "When you build a new house, then you shall make a parapet for your roof, that you should not bring any blood upon your house, if any man falls from there"²⁴ contains the other two commands, building an parapet, and not bringing blood upon one's house. Not building a parapet for the roof is not the direct cause of loss of life, but shows disregard to life, because one may fall from there. It is clear that in essence of all three commands are the same.

Hence, the difference between endangering life in an actual significant risk, and showing irreverence to life by taking a risk that is really small and tends to be ignored by people, is whether the motivation is an essential component of the transgression. In the first case, the prohibition exits regardless of the motivation,²⁵ and taking such a

¹⁸ Maimonides, Laws of The Principles of The Torah, V, 7; Laws of Murderer and Preserving Human Life I, 9. See there, and Sandhedrin 72, b, as to the difference between that and the obligation to kill a pursuer who threatens life.

¹⁹ Deut. IV, 9

²⁰ Maimonides, Laws of Murderer and Preserving Human Life XI, 4

²¹ Ibid. XI, 5.

²² Punishment decreed by the Rabbis, usually for transgressing a rabbinical prohibition, as opposed to "stripes", ordained by biblical law

²³ Discussed together in Maimonides ibid. XI.

²⁴ Deut. XXII, 8.

²⁵ Rabbi Moshe Feinstein prohibited performing a dangerous surgery attempting to save the patient's life, if survival chances are less than fifty percent (*Igrot Moshe* Vol. VI, *Yoreh Deah* part III, 36). Hence even the most logical motivation to taking a significant risk - that of saving one's own life - does not permit it.

risk is considered to be "foolish piety." In the second case, a motivation of saving another life²⁶ certainly does not consist of showing disrespect to life, and even though one is not obliged to take such a risk (that is akin to a danger to life²⁷), still he may do so and is considered to be a pious person who should be blessed for his courage and selflessness.

In the same vein, the prohibition against injuring another, or oneself, also seems to stem from the disrespect shown towards the injured person. The verse that is the source of this prohibition²⁸ ends with the reason "then your brother should seem vile to you." When that injury to oneself is done to save life, it does not show such disrespect, on the contrary it a noble act, and rather than being forbidden constitutes of "pious conduct."

However, the concept of the link between motivation and the prohibition to injure or risk oneself needs to be better refined.

In another responsum²⁹ Ben Zimra elaborates on the obligation to save life: "You should know that in order to save one's fellow man's life... even when there is a probable risk to one's life, one must rescue his fellow man... But if the risk leans towards certainty (i.e. more than fifty percent chance) one is not obliged to sacrifice himself in order to rescue one's fellow man's life. Even at a balanced risk (i.e. fifty percent chance) one is not obliged to sacrifice his life 'who knows that his blood is redder? Perhaps your blood is redder.'³⁰ However, when the risk is not balanced but leans towards rescue (i.e. less than fifty percent chance), and one chooses not to take the risk and not save life he transgresses the biblical prohibition³¹ "nor shall you stand by the blood of your neighbor."³²

This responsum seems to contradict the previous one. In the above responsum it was decided that where there is a significant actual risk to the rescuer's life, the rescue consists of "foolish piety." A risk that is less than fifty percent chance is, of course, still very significant. In the second responsum Ben Zimra concludes that a person is obliged to take such a risk to save life. Also, in the second responsum he decides that one is "not obliged" to take a fifty percent chance risk, but he does not say that one is "not permitted" to take such a risk, or even a greater one, as he does in the first responsum.

The answer must be that there is a scale to balance motivation against risk to life and injury to oneself. Two elements come in juxtaposition in actual death - the body is

²⁶ When the risk is that small that it is socially acceptable, it is permitted even in the course of one's job, when the motivation is simply to make a living "And he setteth his soul [i.e., life] upon it: why did this man [the laborer] ascend the ladder, suspend himself from the tree, and risk death itself; was it not that you should pay him his wages?" (Baba Metzia 112, a). See *Igrot Moshe* Vol. IV *Hoshen Mishpat* part I, 104.

²⁷ Note 12 e above.

²⁸ Note 7 above.

²⁹ *Shut Radvaz* vol. V, 218.

³⁰ See note 13 b above.

³¹ Leviticus XIX, 16.

³² "Whence do we know that if a man sees his fellow drowning, mauled by beasts, or attacked by robbers, he is bound to save him? From the verse, nor shall you stand by the blood of your neighbor" (*Sanhedrin* 73, a).

totally and irreversibly damaged³³, and life³⁴ is lost. An actual loss of a limb or an organ is considered partial death³⁵ because it is an irreversible damage to the body, even though no life is lost. Undertaking a probable risk to life may result in death in the near future, hence its immediate effect is the shortening of life expectancy, and is thus akin to death, even though, at the moment, there is no harm to the body.

Thus both cutting off a limb that does not involve a probable risk to life, and undertaking a risk to life that does not involve a bodily damage, do not come under the absolute prohibition of murder, but under the commands not to injure oneself and keeping one's life diligently. Hence, these are permitted when necessary for saving life, since under these circumstances these do not consist of an undue disregard to one's life.

However, when the cutting of a limb does involve a probable actual risk to life, it consists of both elements of loss of life, partial loss of bodily function and shortening life expectancy, and goes higher up in the scale - closer to murder or suicide. Since there is an absolute prohibition against murder, the motivation becomes irrelevant, and the combined loss of the limb and actual risk to life is close enough to murder to be considered "foolish piety" under all circumstances. This was the conclusion of the first responsum by Ben Zimra.

The second responsum deals with a probable risk that its immediate effect is the shortening of life expectancy, but without involving an irreversible bodily damage **now**. Such a risk might be taken in order to save life.

Since we established that there is a scale of actions that are closer to murder and further from it, we may a fortiori conclude that there is a scale of disregard to life and injuring oneself that dictates whether an activity will be permitted.

One may risk one's life in order to make a living, and undertaking such a risk is not considered showing disregard for life,³⁶ but this applies only to a risk of small probability that is socially acceptable. Undertaking a greater risk in order to make a living does indeed show a twisted value system and undue disrespect to life.

Similarly sustaining a minor injury for the purpose of improving one's physical appearance³⁷ is permitted. Sustaining such an injury in order to earn a living is prohibited³⁸, but if the injury is very minor indeed, it is permitted³⁹. Hence there exists some kind of a cost benefit ratio that tells what consists of disrespect to one's body or life, and what is justified. A very small injury is permitted to gain what is considered a relatively small benefit - earning a living, but a greater injury is prohibited for that

³³ Innately, death consists of bodily damage even when circumstances of death were such that the body remained whole, because all bodily functions are lost.

³⁴ The term "life" in this context pertains to the entire human being - a combination of body and soul. Since it consists of entire human endeavor, past and future, the loss of life could be interpreted as losing one's future. That is why shortening one's life expectancy is akin to a loss of life.

³⁵ Note 12 e above.

³⁶ Note 26 above.

³⁷ *Igrot Moshe* Vol. VII *Hoshen Mishpat* part II, 66.

³⁸ *Tosafot Baba Kama* 91, b *Dibur Ha' Mathil Ella Hai*

³⁹ *Igrot Moshe* Vol. IV, *Hoshen Mishpat* part I, 103.

gain. However such an injury is permitted for the greater benefit of improving one's appearance.

It follows that donating an organ (i.e. kidney) in order to save life, is not obligatory (as Ben Zimra pointed out in his first responsum) but should be encouraged as a noble act of piety. Under proper medical care such an organ donation does not pose a real medical danger. Still, such an act is not devoid of medical risk, and often a person who has one kidney may not fast on *Yom Kippur* because he must maintain normal hydration of his body. However, may be argued that the danger that may result from dehydration and other such circumstances does not bring kidney donation to the level of absolute prohibition discussed above.

When the motivation is earning a living, such a major injury, and the ensuing medical risk definitely forbid that organ sale. When the donor's motivation is compound - saving life and earning money there is a test⁴⁰ that defines the motivation that the law considers essential. When there are two motives to an act, one should ask what would have happened if circumstances were such that only one of them was relevant. In our case what would have happened if life was not saved, but money was gained, or when life was saved but no money was gained. If the donor would sell his kidney in the first case, and not in the second, it defines his motive as financial gain alone.

Sacrificing a limb, and undertaking a definite - if small, but not small enough to be socially acceptable - risk to life for a financial gain, does show disregard to life and body and is thus forbidden, even in order to save life, since the motivation is the deciding factor.

Society should not take part in a deal which is immoral and not allowed by law. Since an organ donation is impossible without society's participation through hospitals either financed or at least licensed by society, a contract of organ sale should not be acted upon by the hospital.

⁴⁰ This test seems to be the ground for *Tosafot Psachim* 65, a, that states that even though a person who sweeps an earthen floor intends to fill in holes in the floor, still does not need to fill them, and is thus not considered violating the Laws of Shabbat. The meaning is that the compound motive of cleaning the floor and filling in the holes is not legally defined as such. For removing the dirt alone (had there been no holes in the floor) he would have swept the floor, but for filling the holes alone (had there been no dirt) he would not have done so. Hence the only motive considered is cleaning the floor, and the filling of the holes that resulted only accompanied this cleaning.